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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/737,392	12/15/2000	William T. Dalebout	13914.632	1890

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EXAMINER

AMERSON, LORI BAKER

ART UNIT PAPER NUMBER

3764

DATE MAILED: 12/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/737,392

Applicant(s)

DALEBOUT ET AL.

Examiner

Lori Baker Amerson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 23 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-41 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 and 19-41 is/are rejected.
- 7) ☒ Claim(s) 11-19 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other:

## DETAILED ACTION

### *Claim Objections*

1. Claim 19 is objected to because of the following informalities: "reinforcement" is unclear. Clarification is required.

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

- a. Claims 1-8, 18, 20-22, 24-28, 31-36 are rejected under 35 U.S.C. 102(b) as being anticipated by Gordon. Gordon discloses a device comprising a base/second support (12,14), a board/ first support (36) and an adjustable (29) hub (21,23,31) that has a two-part member comprising a flexible connector (23) and a tilt adjuster (44). As to claims 2-3 and 6-8, the language has not been given patentable weight because the limitations are purely functional in nature and do not recite any structure. As to claims 18 and 20, the outlined shoe is considered a non-slip material. As to claims 21-22, 24, an exercise mechanism comprising a handle (151) coupled to the platform and held by a user. As to claims 25, 31 and 34, see the paragraphs above. Regarding the language, "wherein said connector allows at least one of the weight of the individual and the movement of the individual to cause said first support to move toward said second support" has not been given patentable weight because the limitations

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are purely functional and do not recite any structure. As to claims 26-28, 32-33, 35-36, the language has not been given patentable weight because the limitations are purely functional and do not recite any structure.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

b. Claims 23 and 29-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gordon as applied to claim 22 and 28 above, and further in view of Fan. Gordon discloses all of the limitations of the claimed invention except for the handle being stretchable. Fan teaches a stretchable handle (30) removably coupled to the device. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a handle with stretching qualities in order to provide resistance to the user while exercising.

c. Claims 37-41 are rejected under 35 U.S.C. 103(a) as being unpatentable over McKechnie et al in view of Fan. McKechnie et al discloses all of the limitations of claims 37-39 and 41 except for the handle being stretchable. Fan teaches a stretchable handle (30) removably coupled to the device. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a handle with stretching qualities in order to provide

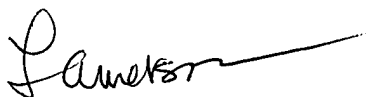
resistance to the user while exercising. As to claim 40, regarding the language has not been given patentable weight because the limitations are purely functional and do not recite any structure.

***Conclusion***

4. Claims 9-17 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to L Amerson whose telephone number is (571) 272-4971. The examiner can normally be reached on Mon.-Fri from 9-6 p.m. Interviews Tue. and Thur.. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on 571-272-4971. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



L. Amerson